IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 16549 of 2004
Date of decision: 6.2.2007.

Darbara Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. S.S. Brar, Advocate,
for the petitioners.

Mr. C.M. Munjal, Senior Additional Advocate General,
Punjab, respondents No. 1 to 3.

Mr. Sandeep Punchhi, Advocate, for
respondents No. 4 and 5.

K.S.GAREWAL, J.

This petition has been filed by Darbara Singh and his son Balwant Singh to challenge the proceedings under the Northern India Canal and Drainage Act, 1873.

As per the sketch annexed with the petition as Annexure P/1, the petitioners' fields receive irrigation through water course ABC. The water course is an old one but the petitioners' neighbours Tara Singh and Bhag Singh (respondents 4 and 5) had demolished portion BC. Restoration

of the demolished portion was claimed. On July 8, 2002 Divisional Canal Officer (DCO) reached to the conclusion that course AB was in operational condition but BC had been demolished. After point C the water course was again operational. The defence of respondents 4 and 5 was not accepted and it was ordered that in the interest of irrigation, the old water course was required to be restored.

Tara Singh and Bhag Singh (respondents 4 and 5) filed an appeal before the Superintending Canal Officer (SCO) who came to the following conclusion:-

> "...that the order of Divisional Canal Officer, Faridkot Canal Division, Faridkot dated 8.7.2002 is not based on facts because the water course which has been restored, it has not been mentioned in his decision that warabandi was operating on this water course or that the shareholders were given compensation in lieu of the water course or this water course has been consolidation. To restore a water course firm evidence is required which the shareholders have not been able to produce in this court nor have the Divisional Canal Officer referred to any evidence in this regard...".

The petitioners have relied upon the inquiry conducted by the Ziledar who had got the site plan prepared with the help of Patwari and the spot had also been inspected by the Sub Divisional Officer. All the officers recommended that the water course should be restored in order to irrigate the land of the petitioners. Statements of both the parties were recorded and the water course was restored.

We are of the view that the findings recorded by the SCO to

upset the order of the DCO were clearly unwarranted. According to the SCO, the DCO ought to have checked the warabandi on the water course and also seen if the shareholders were given compensation in lieu of the water course and whether the water course was reflected in the consolidation proceedings. When the site had been inspected by the independent canal officers, the kind of inquiry that SCO visualised seems to be somewhat unnecessary. Site inspection must overrule all other type of evidence unless there are very serious contradictory indications. In the present case, there is nothing to indicate that the findings based on the inspection of the spot were in any way contradictory to the record.

In view of the above discussion, this petition is accepted, order of SCO dated July 23, 2004 (Annexure P/3) is set aside and that of the DCO dated July 8, 2002 (Annexure P/2) is restored.

(K.S. GAREWAL)
JUDGE

6.2.2007 **(AJAI LAMBA)**
prem **JUDGE**